THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.28220 of 2005

%01-08-2013

M/s.Deva Breweries (P) Limited and another.

.... Petitioners.

Versus

$ Chief Secretary, State of Andhra Pradesh
Department of Proh. & Excise, Secretariat and others.

..... Respondents.

< GIST:

> HEAD NOTE:

!Counsel for the petitioners : Sri Ravi S.

^ Counsel for the respondent Nos.1, 3 & 4 : Government Pleader for Excise.

^ Standing Counsel for respondent No.2 : Sri N.Raghava Reddy.

? Cases referred

[1] (2010) 5 SCC 186
2 (1981) 2 SCC 205
3 (2006) 5 SCC 702

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.P.No.28220 of 2005

ORDER :

In this writ petition, the petitioners seek a Writ of Mandamus directing the respondents to consider and process the application dt.07-04-2000 submitted by 1st petitioner to the Hon'ble Minister for Prohibition and Excise, Government of Andhra Pradesh (with copies marked to respondent no.s 3 and 4) for conversion of the

Letter of Intent (granted to petitioners by the Government of Andhra Pradesh on 11-01-1993) into a licence for the purpose of manufacture of Beer as per the order dt.20-07-2004 in W.P.M.P.No.15503 of 2004 in W.P.No.2324 of 2003, without insisting that the 1st petitioner apply for the same as per Rules 3 and 4 of the Andhra Pradesh Brewery Rules, 1970 as amended by G.O.Ms.No.843 Revenue (Excise-III) Department dt.25-10-2004.

2. The 1st petitioner is a Private Limited Company and the 2nd petitioner is its Director.

3. A Letter of Intent dt.11-01-1993 was issued by the Government of Andhra Pradesh in Ref. CR.No.94055/Ex/111-I for construction and working of a brewery for the manufacture of Beer at Khammam District for a period of two years subject to the 1st petitioner furnishing to the 4th respondent, a security deposit in the form of a demand draft for Rs.50,000/- from a scheduled bank. The 1st petitioner was also granted industrial licence under the Industries (Development and Regulation) Act, 1951 for the manufacture of Beer by the Government of India, Department of Industrial Development, New Delhi.

4. However, Government of Andhra Pradesh kept the Letter Of Intent dt.11-01-1993 issued to the 1st petitioner in abeyance vide Order dt.17-02-1993. On 25-01-1994, a show cause notice was issued to the 1st petitioner proposing to cancel the Letter of Intent issued to it. The Government of India addressed a letter to the Government of Andhra Pradesh dt.20-07-1994 stating that the Government of Andhra Pradesh is not competent to grant licences for setting up of distillery units and requesting it to review the letter dt.11-01-1993 granting Letter of

Intent issued to the 1st petitioner which was subsequently kept in abeyance vide letter dt.17.2.1993.

5. In the mean time, the A.P. Prohibition Ordinance (Ordinance No.19/1994) was issued in December, 1994 introducing prohibition in the State of Andhra Pradesh. Subsequently the A.P. Prohibition Act, 1995 was also enacted in February, 1995.

6. The 1st petitioner filed W.P.No.667 of 1995 in the High Court challenging the constitutional validity of the amendments made to Section 2 (19) and 2 (21) (a) of the AP Excise Act, 1968 and Clause 2 (7) (a) of the AP Prohibition Ordinance insofar as those provisions relate to Beer, contending that they are ultravires of Item-8, List-II, VII Schedule of the Constitution and that Beer is not an intoxicating liquor. It sought a declaration that the inclusion of Beer in the AP Prohibition Ordinance, 1994 while omitting toddy, is discriminatory and violative of Article 14 of the Constitution of India.

7. By order dt.30-03-1998, the said writ petition was disposed of holding that provisions of the A.P. Prohibition Act,1995 had been upheld by a Full Bench of this Court in its judgment dt.21-04-1995 in W.P.No.22999 of 1994 and batch; that in W.P.No.2506 of 1995 and batch, this Court had held that the AP Prohibition Act,1995 did not prohibit the manufacture of liquor; and therefore it would be sufficient if a direction is given to the State of Andhra Pradesh to consider the application of the 1st petitioner in the light of the decision of this Court in W.P.No.2506 of 1995 and batch.

8. While the said writ petition was pending, the 3rd respondent issued G.O.Rt.No.1068 Revenue (Ex-III) Department,

dt.17-07-1996 withdrawing the Letter Of Intent dt.11-01-1993 issued to the petitioners stating:

> (1) there should not be any undue diversion of Molasses to the potable alcohol sector after decontrol of Molasses by Government of India,
> (2) To introduce total prohibition in the State of Andhra Pradesh n a phased manner and
> (3) to implement the findings of Justice Y.V.Anjaneyulu, Commissioner of Inquiry as accepted by the State Legislature.

This order was passed in exercise of the powers conferred under Rule 4 (2) (d) of the Andhra Pradesh Brewery Rules, 1970.

9. On 18-09-1997, petitioners approached the respondents for permission to establish a brewery after the prohibition in the State was withdrawn. On 21-02-1998, the 4th respondent recommended to the 3rd respondent to consider the request of the petitioners favorably. Vide Memo No.63961/Ex.III-1/97-5 dt.18.1.1999, the State Government considered the request of the petitioners for grant of Letter of Intent to establish the brewery at Khammam District for manufacture of Beer and rejected it on the ground that it had not granted new licence/Letter Of Intent to any distillery or brewery in the State during the excise year 1998-99.

10. Subsequently, vide G.O.Ms.No.168, Revenue (Excise-II) Department dt.31-03-2000, the State Government reviewed the excise policy for the year 1999-2000 (which came to an end by 31-03-2000) and framed the excise policy for the year 2000-01. This policy stated that expansion and establishment of new breweries will be permitted to meet the uncovered demand in the State.

11. W.P.No.16352 of 2000 was filed by the 1st petitioner for a direction to the Government of Andhra Pradesh to grant

permission to it to start manufacture of Beer at Khammam District pursuant to the Letter Of Intent dt.07-05-1993 issued to it. The said writ petition was admitted on 06-09-2000.

12. In the meantime, a Memo dt.20-03-2002 was issued by the Government of Andhra Pradesh rejecting 30 applications pending before it for issuance of Letter Of Intent (including the application of the 1st petitioner).

13. Aggrieved thereby, the petitioners filed W.P.No.2324 of 2003 in this Court to quash the said Memo dt.20-03-2002. In the said writ petition, the petitioners filed W.P.M.P.No.15503 of 2004 to direct the respondents 1 and 3 not to consider the applications of any other applicants for grant of brewery licence in the State of Andhra Pradesh without considering the application of the 1st petitioner, pending disposal of the said writ petition. On 20-07-2004, this application was disposed of directing the respondents to consider the 1st petitioner's application along with other applications. On 21-07-2004, the 1st petitioner addressed a letter to the 3rd respondent informing the 3rd respondent about the order dt.20-07-2004 passed by this Court in W.P.M.P.No.15503 of 2004 in W.P.No.2324 of 2003 and requested for renewal of it's breweries license.

14. On 04-08-2004, W.P.No.16352 of 2000 filed by the 1st petitioner, was disposed of by this Court with a direction to respondent No.2 to consider the 1st petitioner's representation dt.07-04-2000.

15. On 31-08-2004, the 1st petitioner addressed a letter to 3rd respondent for restoration of it's original Letter of Intent contending that the State Government had considered the case of

M/s.GMR Industries and issued Letter of Intent to it for establishment of the brewery in Srikakulam District; that petitioners had come to know that the Government has actively considered application of M/s.Empee Breweries Limited, Nellore for establishment of new brewery, in spite of the fact that its earlier application was rejected; that it is considering the application of Sri Sardar Harmahender Singh Bagga also; and in the light of the Order dt.04-08-2004 in W.P.No.16352 of 2000, Letter Of Intent may be restored to the 1st petitioner as it had made considerable investment towards the project. This representation was kept pending by 3rd respondent. The 3rd respondent also did not initiate any action to consider the 1st petitioner's application dt.07-04-2000 as directed in the order dt.04-08-2004 of this Court in W.P.No.16352 of 2000.

16. In the meantime, the State Government issued G.O.Ms.No.843 Revenue (Excise-III) Department dt.25-10-2004 amending the Andhra Pradesh Brewery Rules, 1970. It substituted Rule 3 of the 1970 Rules as follows:

> "3. Method of application for grant of license.
>
> (1) An application for grant of license for the construction and working of a brewery in Form-B1, and be addressed to the Commissioner of Prohibition and Excise. The application shall be accompanied by full description of premises and utensils and the purpose of and the distinguishing mark of each room, place and vessel. Every such application for grant or renewal of a brewery license shall bear the non-judicial stamp value of Rs.10/- or such value as may be fixed by the Government from time to time.
>
> (2) In case the licensee fails to construct and work the plant and machinery and manufacture Beer within a period of 2 ½ years from the date of grant of Letter of Intent the license granted to him shall be liable for cancellation without compensation for any damage or lose"."

It also substituted Clause 'c' of sub rule (2) of Rule 4 of 1970

Rules vide following:

> "(c) (i) **No application under clause (a) shall be entertained unless a special fee of Rs.2 crores is paid into the Government Treasury and a challan in original in support of such payment is enclosed of the application**.
>
> (ii) When the Government are satisfied of the proposed scheme of the applicant, they may accord the sanction and communicate it in the form of Letter of Intent in Form B-5. The letter of intent shall be valid for period of 2½ years from the date of issue. The special fee of Rs.2 crores paid under the above clause (i) shall be forfeited to the Government in case the holder of letter of intent fails to convert into a license and commences commercial production within a period of 2 ½ years from the date of letter of intent.
>
> Provided that the special fee paid under clause (c) (i) shall be Adjusted towards future license fee in case the licensee commences commercial production within a period of 2 ½ years from the date of the Letter of intent".

17. Thus from 21-07-2004, under the amended Rule 4, a special fee of Rs.2.00 crores was to be paid in a Government Treasury before an application for grant of licence for construction and working of brewery is to be considered.

18. The 1st petitioner submitted a representation dt.02-12-2004 to 3rd respondent contending that the amended rules, particularly the requirement of paying special fee, would not be applicable to the petitioners and the respondents cannot direct the 1st petitioner to deposit the special fee of Rs.2.00 crores as a condition precedent for considering its application. It contended that this condition would apply to the fresh applicants only and since the 1st petitioner's case is pending right from 1991, and the High Court had directed the respondents to consider the 1st petitioner's case by order dt.04-08-2004 (much before the amendments were brought into

force from 25-10-2004), it need not make the payment of special fee of Rs.2.00 crores as mandated by the amended Rule 4.

19. The 4th respondent however addressed a proceeding Cr.No.B4/2128/2004/DDB/Ex. dt.19-07-2005 to 1st petitioner stating that in view of the amendments to Rules 3 and 4 of the Andhra Pradesh Brewery Rules, 1970, the State Government vide Memo No.14657/Ex.III (1)/2003 dt.12-07-2005 had returned it's proposal for setting up of a new brewery in Andhra Pradesh.

20. Aggrieved thereby, the petitioners have filed this writ petition.

21. The petitioners contend that the action of respondents is illegal, arbitrary; that in spite of a specific direction by this Court dt.04-08-2004 in W.P.No.16352 of 2000 to consider the 1st petitioner's representation dt.07-04-2000, the respondents had not taken any action for a long period even though the 1st petitioner had a valid Letter of Intent from the Government India even as on 11-01-1993; that the 1st petitioner's deposit of a sum of Rs.50,000/- was lying with the respondents for over 14 years from
24-01-1991 and at this point of time, the respondents cannot insist that the 1st petitioner pay a special fee of Rs.2.00 crores on the basis of the amended Rules; that the 1st petitioner's application dt.07-04-2000 ought to be disposed of on the basis of the law that existed on the date when the direction was given by this Court to consider the said application; and therefore the writ petition be allowed and the respondents be directed to consider and process the 1st petitioner's application dt.07-04-2000 in terms of the

directions issued by this Court in W.P.M.P.No.15503 of 2004 in W.P.No.2324 of 2003 without insisting on 1st petitioner applying as per the amended Rules.

22. On 04-06-2012, W.P.No.2324 of 2003 was disposed of by this Court in terms of the interim order dt.20-07-2004 in W.P.M.P.No.15503 of 2004. The petitioners therefore contend that the respondents are bound to consider their application as per the unamended AP Brewery Rules, 1970 and the respondents cannot demand that the petitioners pay a special fee of Rs.2.00 crores as per the amended Rules.

23. The 2nd respondent filed a counter affidavit admitting that a Letter Of Intent No.182 (1993) dt.07-05-1993 was issued to the 1st petitioner; that subsequently it had also issued a letter dt.26-07-1994 to the Secretary (Industries), Government of Andhra Pradesh requesting to review the letter issued by the Revenue (Excise-III) Department dt.11-01-1993 (which had been in kept in abeyance by the State Government vide letter dt.17-02-1993 to 1st petitioner) as the State Governments are not competent to grant licences for setting up of distilleries and that only the Government of India can grant of approval for creating further capacity for manufacture of alcohol. It also stated that after the judgment of the Supreme Court in W.P.No.322 of 1996 dt.29-01-1997 in **Bihar Distilleries vs. Union of India**, no new licence for Alcoholic Sector is being issued by it.

24. The 4th respondent filed a counter setting out the events preceding the passing of the order in Memo No.14657/Ex.III (1)/2003 dt.12-07-2005. It contended that 1st petitioner is not entitled to establish a brewery in the State of Andhra Pradesh without obtaining a Letter Of Intent from the State Government; that

it cannot rely on the Letter Of Intent issued by 2nd respondent; that when prohibition was introduced in the State, the State Government felt that there was no need to grant licence to distilleries and breweries; and therefore the 1st petitioner's application was rejected in accordance with the then policy of the State Government. While admitting that the policy of the State Government for the year 2000-01 permitted expansion and establishment of breweries in order to meet uncovered demand, 4th respondent stated that the petitioners filed application on 07-04-2000 to convert Letter Of Intent (which was cancelled/withdrawn) into a licence for manufacture of Beer. The 4th respondent also stated that the Letter Of Intent granted to the petitioner in 1993 was cancelled taking into consideration the findings of the Commissioner of enquiry as accepted by the State legislature and also taking into consideration recommendations of a High Power Committee. He also stated that all 30 applications including that of the 1st petitioner were rejected. He stated that the Commissioner of enquiry in its report, made certain recommendations and as per recommendations contained in para 11.01 (II), Letter Of Intent issued to M/s.GMR Breweries Limited for establishing brewery, were allowed to stand without cancellation. It is stated that after the interim order dt.20-07-2004 in W.P.M.P.No.15503 of 2004 in W.P.No.2324 of 2003, the respondents directed the petitioners to comply with Rule 4 of the AP Brewery Rules, 1970 (as amended by G.O.Ms.No.843 dt.25-10-2004 referred to above), and the 1st petitioner had not taken any steps thereon. He stated that the 1st petitioner was informed that it had to pay the special fee of Rs.2.00 crores which would be considered towards future licence fee. The 4th respondent contended that the Rules prevailing at the time of submitting application are not relevant, and Rules which are in

force at the time of considering application alone, are relevant. He denied the contention of the petitioners that the amended G.O. has no application to 1st petitioner and stated that even if 1st petitioner had previously made payment of Rs.50,000/- at the time of submitting his application, it still had to pay Rs.1,99,50,000/- as per amended Rule 4. He clarified that the respondents had considered the application of M/s.Crown Group of Company and issued Letter Of Intent in the month of August 2005 as it fulfilled all the conditions and also remitted Rs.2.00 crores as special fee as per amended rule and the petitioners cannot rely on it.

25. A reply affidavit was filed by petitioners contending that 3rd respondent issued G.O.Ms.No.92, (Revenue) (Ex-III) Department dt.27-01-2007 amending the Andhra Pradesh Breweries Rules 2006 and Regulations and Policies for issuing a letters of intents/licences; although the 1st petitioner's application for establishment of a Beer producing unit was kept pending for several decades, at least seven applications of other parties are considered and orders issued up to March 2013; apart from this, Letters Of Intent were also issued to four other parties. The petitioners also stated that the Beer sales in 1994-95 were about 51-67 lakhs cases per annum and in 2012-13 they had increased to 426.94 lakhs cases. The petitioners also stated that M/s.SPY Agro Industries Limited was issued Letter of Intent No.46865/Ex.III(1)/2008-1 dated 20-10-2008; that it expired by 17-10-2011 and there has been no follow up action initiated by the respondents; that there is no policy prevailing after withdrawing the G.O.Ms.No.691 Revenue (Excise-III) Dept., dated 19-12-2012, for new applications; that the validity of Letter of Intent issued in respect of S.P.Y. Agro Industries Limited was extended up to 19-04-2014 vide Government Memo No.20132/Ex.III (1)/2011-7 dated

17-04-2013; and the production capacity of S.P.Y. Agro Limited was reduced from 2000 Lakh PLs to 1000 Lakh PLs vide Memo No.20132/Ex.III(1)/2011-8 dated 17-4-2013 even at the stage of Letter of Intent. They contended that Petitioners are also eligible for renewal of LOI based on the consideration given to M/s.S.P.Y. Agro Industries Limited for renewal of the LOI after expiry without collecting any fees and even after withdrawal of G.O.Ms.No.691, Revenue (Ex.III) Department dated 19-12-2012 by the Respondent No.3.

26. Heard the learned counsel for the petitioners and the learned Government Pleader for Prohibition and Excise appearing for the respondents.They reiterated the above submissions.The learned Government Pleader for Prohibition and Excise also relied upon the decision of the Supreme Court in the **State of Kerala and Another Vs. B. Six Holiday Resorts Private Limited and Others**[1].

27. I have noted the respective submissions of the parties.

28. The main contention of the petitioners is that the respondents are bound to consider the petitioners' application as per the law prevailing as on the date of submission of their application or on the date when this court granted interim order dt.20.7.2004 in WPMP No.15503/2004 in WP.No.2324/2003. They contend that the petitioners cannot be made to pay Rs.2.00 crores special fee as per G.O.Ms.No.843, Revenue (Excise-III) Department dt.25-10-2004 which came into force prospectively later.

29. In **State of Tamil Nadu Vs. M/s.Hind Stone and**

Others[2], the Supreme Court was dealing with the grant of a licence for quarrying black granite under the Tamil Nadu Minor Mineral Concession Rules, 1959. Rule 8 (c) of the said Rules introduced vide G.O.Ms.No.1312, Industries dt.02-12-1977 stated that on and from 07-12-1977, no lease for quarrying black granite would be granted to a private person and that the State Government itself may engage in quarrying black granite or grant lease for quarrying black granite in favor of any corporation wholly owned by it. Some of the applications for renewal of leases were made long prior to introduction of Rule 8 (c). Their applications were rejected in view of Rule 8 (c). They contended that since their applications were prior in point of time to the introduction of Rule 8 (c), their applications for renewal of leases cannot be considered by applying said Rule 8 (c). The Supreme Court rejected the said contention and held that the renewal of a quarry lease was not automatic and the applicant for renewal had to satisfy the Government that the renewal is in the interest of mineral development and that the lease amount is reasonable in the circumstances of the case. These conditions had to be fulfilled in addition to whatever criteria was applicable at the time of grant of the lease in the first instance or for grant of renewal; if as a result of experience gained after watching performance of private entrepreneurs in the mining of minor minerals, it is decided to stop grant of leases in the private sector in the interest of conservation of particular mineral resource, attainment of the object sought will be frustrated, if renewal is to be granted to the private entrepreneurs, without regard to the changed outlook. It held that in fact some of the applicants for renewal of leases may themselves be persons who are responsible for the changed outlook and to renew leases in their favour would make the making of Rule 8 (c), a mere exercise in futility. It therefore held that Rule 8

(c) is attracted for consideration of licence and renewal of leases also.

30. In **Kuldeep Singh v. Govt. of NCT of Delhi**[3], the Supreme Court was dealing with the Punjab Excise Act, 1914 as applicable to the Union Territory of Delhi and Delhi Liquor Licence Rules, 1976. The excise policy in 2002 formulated by the Government of National Capital Territory of Delhi permitted to sell of Indian Made Foreign Liquor (IMFL) through private parties upon issuance of L-52 licences. For the year 2004-05, an the advertisement was issued inviting applications for grant of L-52 licences for retail sale of IMFL in commercial areas subject to the following conditions:

> *"(i) No fresh L-52 licence in the private sector would be granted if the location of the proposed vend was within 250 meters of an existing retail vend.*
>
> *(ii) The applicant should be in actual physical possession of a shop admeasuring 500 sq. ft. in an approved and recognized commercial complex.*
>
> *(iii) Proposed vend should not be within 75 meters of : (a) major educational institutions; (b) religious places; and (c) hospitals with 50 beds and above.*
>
> *(iv) The grant of L-52 licence shall be subject to the acceptance of the application by the competent authority who may accept or reject any application without assigning any reasons. Further, the licensing authority was under no obligation to grant any licence for which application had been made.*
>
> *(v) The licence was to be subject to the general conditions in Rule 33 and special conditions in Rule 34 of the Delhi Liquor License Rules, 1976."*

The petitioner therein also made an application for grant of L-52 licence which was rejected. He preferred an appeal to the Excise Commissioner which was allowed on 11-05-2005 remitting the matter to the Collector (Excise) with a direction to conduct a fresh inspection to ascertain the facts. This was

challenged in the High Court by the appellant therein contending that their applications had to be considered as per the policy existing on or before 16-09-2005. It appears that in March 2005 itself, the Cabinet took a decision that no fresh licence would be issued by the Excise Department but despite the same, the applications of certain persons were processed on the ground that in the event, the State was to direct approval in regard to continuation of its liquor policy, the licences could be issued immediately thereafter. The Court held:

> *"15. The Appellants filed applications for grant of licence pursuant to the policy decision adopted by the State. They might have invested a huge amount, but did not thereby derive any accrued or vested right. The matter relating to grant of licence for dealing in liquor is within the exclusive domain of the State. If the State had the right to adopt a policy decision, they indisputably had a right to vary, amend or rescind the same. The effect of a policy decision taken by the State is to be considered having regard to the provisions contained in Article 47 of the Constitution of India as also its power of regulation and control in respect of the trade in terms of the provisions of the Excise Act…..*
>
> *36. In a case of this nature where the State has the exclusive privilege and the citizen has no fundamental right to carry on business in liquor, in our opinion, the policy which would be applicable is the one which is prevalent on the date of grant and not the one, on which the application had been filed. If a policy decision had been taken on 16-9-2005 not to grant L-52 licence, no licence could have been granted after the said date."*

31. In **B. Six Holiday Resorts Private Limited and others** (1 *supra*), the State Government of Kerala amended the Foreign Liquor Rules framed under the Kerala Abkari Act vide the Foreign Liquor (Amendment) Rules, 2002 vide notification dt.20.02.2002 with retrospective effect from 01.07.2001 substituting the last proviso under sub-rule (3) of Rule 13 with the following proviso : "Provided that no new licenses under this Rule shall be issued." The respondent therein had applied on 11.12.2000 under the unamended rules for an FL-3 license. As

the said application was not considered, it approached the High Court which directed the Excise Authorities by order dt.09.01.2001 to dispose of the respondent's application in three weeks. By order dt.19.05.2001, the respondent's application was rejected on the ground that it's Managing Director had been convicted in an excise offence. The respondent again challenged it in a writ petition on the ground that the person convicted was not its Managing Director when the application was made. This writ petition was allowed on 20.06.2001 with a direction to reconsider the application and pass a fresh order taking note of the fact that the convicted Managing Director was no longer in office and there was a new Managing Director at the time of the application. Again, the respondent's application was rejected on 06.10.2001 on the ground that the current policy of the Government was not to grant any fresh licenses apart from three other grounds. It filed another writ petition challenging the rejection. This was dismissed by the single Judge of the Kerala High Court but the Writ Appeal against the said order was allowed directing the respondent's application to be considered by the Excise Commissioner on the ground that the policy put forth was vague and the Government cannot abdicate its function under the rules to consider and grant license, by alleging some vague policy. Again the respondent gave a representation dt.19.12.2001. On 20.02.2002 it was rejected placing reliance on the amended Foreign Liquor Rules mentioned above. When the respondent challenged it in the High Court by way of a writ petition, the High Court allowed it holding that the application had to be considered with reference to the rules as they existed on the date of the application and not on the date of consideration of the application. The State of Kerala appealed to the Supreme Court. After referring to **Hind Stone** (2 *supra*) and **Kuldeep Singh** (3 *supra*) and other cases, the Supreme Court

held that applications for licenses have to be considered with reference to the law prevailing on the date of the consideration. It observed :

> *"26. Learned counsel appearing for the applicant next contended that the decision in **Kuldeep Singh** was not with reference to any statutory rules, but with reference to a policy of the executive and therefore inapplicable. We find no force in this argument.*
>
> *27. It is true that in **Kuldeep Singh** case there were no statutory rules and what was considered was with reference to a policy. But the ratio of the decision is that where licence sought related to the business of liquor, as the State has exclusive privilege and its citizens had no fundamental right to carry on business in liquor, there was no vested right in any applicant to claim an FL-3 licence and all applications should be considered with reference to the law prevailing as on the date of consideration and not with reference to the date of application. Whether the issue relates to amendment to Rules or change in policy, there will be no difference in principle. Further, the legal position is no different even where the matter is governed by statutory rules, is evident from the decisions in **Hind Stone** and **Howrah Municipal Corpn**.*
>
> *28. Having regard to the fact that the State has exclusive privilege of manufacture and sale of liquor, and no citizen has a fundamental right to carry on trade or business in liquor, the applicant did not have a vested right to get a licence. Where there is no vested right, the application for licence requires verification, inspection and processing. In such circumstances it has to be held that the consideration of application of FL-3 licence should be only with reference to the rules/law prevailing or in force on the date of consideration of the application by the Excise Authorities, with reference to the law and not as on the date of application. Consequently, the direction by the High Court that the application for licence should be considered with reference to the Rules as they existed on the date of application cannot be sustained."*

32. In view of the above decisions of the apex court, I am of the opinion that the contention of the petitioners that their application dt.07.04.2000 should be considered as per the rules prevailing on the said date or on the date when interim order dt.20.07.2004 in WPMP.No.15503 of 2004 in WP.No.2324 of 2003 was passed or when WP.no.16352 of 2000 was disposed of on 04.08.2004, is not

tenable. Only the law existing on the date of consideration of the application should be taken into account and not the law prevailing on the date of the application. Apart from this, under the A.P. Excise Act, 1968, Excise Policy is framed every year. Therefore, if an application is made for grant of a license in a particular Excise Year, it would be considered as per the policy of that year only. Therefore, once the policy changes, the earlier application can no longer be considered and an applicant has to apply afresh as per the changed policy and comply with the requirements of the new policy. This is because there is no vested right to get a license to manufacture or trade in liquor nor does a citizen have a fundamental right to carry on trade or business in liquor. The State has exclusive privilege in the matter of manufacture and sale of liquor. So the application made by the petitioners on 07.04.2000 cannot be said to be "live" as on the date the amendment to the A.P. Brewery Rules, 1970 was introduced vide G.O.Ms.No.843 dt.25.10.2004. There was thus no illegality in the respondents insisting that the petitioners pay Rs.2 crores towards Special fee as per the said G.O. so that their application for grant of a license to start manufacture of Beer in the State is considered.

33. For the above reasons, I find no merit in the writ petition and the same is accordingly dismissed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 01-08-2013
Kvr/Ndr/*

LR COPY TO BE MARKED : **YES** / **NO**
B/o.
Kvr/Ndr/*

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.P.No.28220 of 2005

Date : 01-08-2013
Kvr/Ndr/*

[1] (2010) 5 S.C.C. 186

[2] (1981) 2 S.C.C. 205

[3] (2006) 5 S.C.C. 702